

REMARKS/ARGUMENTS

Applicants would like to thank the examiner for the careful consideration given the present application. Claims 1-39 have been canceled without prejudice. New claims 40-45 are added without adding any new matter. Applicants respectfully request reconsideration and allowance.

Claims 40, 42, 44 and 45 have been amended without adding any new matter. Furthermore, new claims 46-51 have been added. New claims 46-51 corresponds to original claims 17 and 23.

In the current Office Action, claims 40-45 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Minde et al. (WO 00/33511, hereinafter Minde) in view of Kallioulju et al. (U.S. 6,618,591, hereinafter Kallioulju). For the following reasons, rejection is respectfully traversed.

According to amended claim 40, the enforcement module can control traffic in two ways (that is, a terminal has hybrid functionality).

Firstly, when the communication module receives the QoS enforcement instructions from a central controller, the enforcement module performs traffic regulation based on the instructions (first functionality). This first functionality is supported at least on Page 33, Line 19 - Page 35, Line 14; Page 36, Line 10 - Page 38, Line 24; Fig. 6 (605 and 606); Fig. 11 etc. of the original disclosure.

Secondly, when the monitor module detects threshold violation, the enforcement module performs traffic regulation based on QoS information collected by a monitor module (second functionality). This second functionality is supported at least on Page 7, Line 23 - Page 8, Line 5; Page 33, line 19 - Page 35, Line 14; Page 36, Line 10 - Page 37, Line 24; Fig. 6 (602, 603 and 604), Fig. 11 etc. of the original disclosure.

The Examiner has argued that Minde discloses that an enforcement module performs traffic regulation based on the instructions (i.e. the first functionality). However, even if true, Minde does not disclose that the enforcement module performs traffic regulation to correct

threshold violation, as the Examiner has noted on Page 3, Lines 18-19 of the current Office Action.

On the other hand, the Examiner has further argued on Page 3, Line 20 - Page 4, Line 2 of the current Office Action that Kalliokulju discloses the enforcement module performs traffic regulation to correct threshold violation. Even if Kalliokulju arguably discloses that a terminal performs traffic regulation based on instructions from the RAN (Radio Access Network), Kalliokulju fails to disclose that the enforcement module performs traffic regulation based on QoS information collected by a monitor module

As described above, the features recited in claim 41 are characterized in that the terminal has both the first functionality and second functionality, and performs traffic regulation by using either the first functionality or second functionality depending on the situation, and is also characterized in that the enforcement module performs traffic regulation based on QoS information collected by a monitor module. These technical features are not taught by Minde and Kalliokulju.

Furthermore, features recited in amended claim 42 are characterized in that the enforcement module compares a value indicated by the QoS enforcement instructions to a current measurement indicated by the QoS information collected by the monitor module, and regulates the behaviour of the terminal if the current measurement is less than the value. The examiner has argued on Page 4, Lines 8 and 9 of the current Office Action that a current measurement measured by the monitoring module corresponds to "limits imposed by last command from SQS (Pg. 16: 5-10)". However, "limits imposed by last command from SQS" is quite different from an amended wording "a current measurement indicated by the QoS information collected by the monitor module". In addition, "comparing a value indicated by the QoS enforcement instructions to a current measurement indicated by the QoS information collected by the monitor module" and "regulating the behaviour of the terminal if the current measurement is less than the value" are not taught by Minde and Kalliokulju.

In addition, the Examiner has argued on Page 5, Lines 1-3 of the current Office Action that Kalliokulju discloses "means for terminating sessions and stopping transmission of packets" recited in claim 43. However, Kalliokulju fails to disclose that the enforcement module comprises means for terminating sessions and stopping transmission of packets; that is, the

enforcement module performs traffic regulation by actively terminating sessions and actively stopping transmission of packets by the above means.

Thus, for any of the above reasons, claims 44 and 45, and the claims dependent thereon, are patentable over the combination of references.

Moreover, claims 44 and 45, as amended both recite a database connected to the network that is configured to store subscription information of a user who uses the terminal and service level agreement information. Although the Examiner cites Minde for such a teaching (citing page 11, lines 6-13), the cited section merely describes an end-user threshold, which does not imply any storing of subscription information or service level agreement information (which is not necessary to exist, for example for free services, and thus cannot be implied by the reference).

The Examiner appears to recognize this lack of explicit teaching when he states that providing the database is "obvious since predetermined end-user QOS implies subscription and service level agreement". Thus Examiner appears to be arguing that such a database is inherent. However, it is not legally sufficient to merely allege that a function or feature is "inherent". The Examiner must provide *evidence* and or supporting rationale to show inherency. MPEP §2112. The fact that a certain result or characteristic *may* occur or be present in the prior art is *not sufficient* to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art) (emphasis added); *In re Oelrich*, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). "To establish inherency, the extrinsic evidence `must make clear that the missing descriptive matter is *necessarily present* in the thing described in the reference, and that it *would be so recognized by persons of ordinary skill*. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' " *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (emphasis added). "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). See MPEP §2112.

Moreover, it is not necessarily true that a central database must be provided to store subscription information of a user who uses the terminal and service level agreement information just to provide a EuQoS, as a predetermined end user QOS could be globally set (not user-dependent). Or it could be set based on the program, the circumstances of the broadcaster, the network configuration, etc. It is therefore not necessary that subscription information of a user or service level agreement information be stored to use such a parameter, and thus the use of the central database for this purpose is not inherent to the Minde system.

Accordingly, claims 44 and 45, and the claims dependent thereon, are patentable over the reference for these reasons as well.

In consideration of the foregoing analysis, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No.: NIHE-38824.

Respectfully submitted,
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